IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 790 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PUSHPAGAURI R JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR RN SHAH for Petitioner

MR KP RAWAL, APP for Respondent No. 1

MR RC JANI for Respondent No. 2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 08/09/2000

ORAL JUDGEMENT

The Respondent No.2 filed a criminal complaint (Criminal Case No.5626 of 1991) against the petitioner in the court of J.M.F.C., Mehsana alleging that the

petitioner had committed an offence punishable under Section 138 of the Negotiable Instruments Act. The learned Magistrate issued process on the complaint. The petitioner entered appearance and gave an application Exh.4 praying that the complaint should be quashed on the grounds stated in the application. The learned Magistrate, by his order dated 11th March, 1992, dismissed the said application on the ground that once process had been issued, no such application was maintainable under Section 203 of CRPC and that whether an offence was made out or not can not be determined before the evidence is recorded. The petitioner thereupon filed this Special Criminal Application under Article 226/227 of the Constitution and Section 482 of the Code of Criminal Procedure praying that the complaint/process issued by J.M.F.C., Mehsana be quashed and set aside. Rule was issued on 18th June, 1992. It was made returnable on 3rd July, 1992 and further proceedings in Criminal Case No.5626 of 1991 before the learned J.M.F.C., Mehsana were stayed.

2. The petitioner has not annexed a copy of the complaint with the petition but the learned advocate for Respondent No.2 has produced the same. It shows that it was alleged that the petitioner used to purchase tea from the complainant and she had issued a cheque dated 30.09.91 for Rs.20,000/- drawn on Sabarkantha District Central Cooperative Bank, Chotila. The complainant deposited the cheque in his account on 7.10.91 but it was returned on 10.10.91. The respondent also thereupon gave a notice dated 21.10.91 by Registered Post which was received by the petitioner on 23.10.91. Thereafter, since the petitioner failed to comply with the notice, the complainant filed the complaint on 11.11.1991.

3. The petitioner in her application before the Magistrate contended that the cheque was dishonoured not for insufficient funds but the petitioner herself had stopped payment for the reasons stated in her application.

4. I have gone through the complaint and it is not possible to say that it does not disclose any offence punishable under Section 138 of Negotiable Instruments Act. This is not the stage for going into the merits of the defence, which the petitioner can establish at the trial. In the circumstances, there is no warrant for interference in exercise of writ jurisdiction under Article 226 and 227 of the Constitution or for quashing the complaint under Section 482 of Criminal Procedure Code. The petition is, therefore, dismissed. Rule

discharged. Interim relief stands vacated.

hki